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CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER



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BRIAN C. McNEIL
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

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DATE: December 30, 2002

DOCKET NOS: T-04112A-02-0450, et al.

TO ALL PARTIES: T-04112A-02-0451
T-04113A-02-0452

AZ CORP COMMISSION
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Enclosed please find the recommendation of Administrative Law Judge Teena Wolfe. The recommendation has been filed in the form of an Order on:

ACSI LOCAL SWITCHED SERVICES, INC., et al.
(DISCONTINUANCE OF LOCAL EXCHANGE SERVICE)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

JANUARY 9, 2003

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JANUARY 14 AND 15, 2003

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL
CHAIRMAN

3 JIM IRVIN
COMMISSIONER

4 MARC SPITZER
COMMISSIONER

5
6 IN THE MATTER OF THE JOINT APPLICATION
7 OF ACSI LOCAL SWITCHED SERVICES, INC.,
8 D/B/A E.SPIRE AND AMERICAN
9 COMMUNICATION SERVICES OF PIMA
10 COUNTY, INC. D/B/A E.SPIRE AND XSPEDIUS
11 MANAGEMENT CO. SWITCHED SERVICES
12 LLC AND XSPEDIUS MANAGEMENT CO. OF
13 PIMA COUNTY, L.L.C. FOR EXPEDITED
14 APPROVAL OF (I) THE TRANSFER OF
SUBSTANTIALLY ALL OF THE ASSETS,
INCLUDING THE CUSTOMER CONTRACTS,
OF THE E.SPIRE OPERATING ENTITIES TO
THE XSPEDIUS OPERATING ENTITIES; (II)
THE DISCONTINUANCE OF
TELECOMMUNICATIONS SERVICES IN
ARIZONA BY THE E.SPIRE OPERATING
ENTITIES.

DOCKET NOS. T-04112A-02-0450
T-04113A-02-0450
T-03597A-02-0450
T-03411A-02-0450

15 IN THE MATTER OF THE APPLICATION OF
16 XSPEDIUS MANAGEMENT CO. OF PIMA
17 COUNTY, LLC FOR A CERTIFICATE OF
18 CONVENIENCE AND NECESSITY TO
19 PROVIDE ALL FORMS OF COMPETITIVE
RESOLD AND FACILITIES BASED LOCAL
EXCHANGE, EXCHANGE ACCESS, AND
INTEREXCHANGE TELECOMMUNICATIONS
SERVICE IN THE STATE OF ARIZONA.

DOCKET NO. T-04112A-02-0451

20 IN THE MATTER OF THE APPLICATION OF
21 XSPEDIUS MANAGEMENT CO. SWITCHED
22 SERVICES, LLC FOR A CERTIFICATE OF
23 CONVENIENCE AND NECESSITY TO
24 PROVIDE ALL FORMS OF COMPETITIVE
RESOLD AND FACILITIES BASED LOCAL
EXCHANGE, EXCHANGE ACCESS, AND
INTEREXCHANGE TELECOMMUNICATIONS
SERVICE IN THE STATE OF ARIZONA.

DOCKET NO. T-04113A-02-0452

ORDER

25 Open Meeting
26 January 14 and 15, 2003
27 Phoenix, Arizona

BY THE COMMISSION:

28 On June 19, 2002, American Communication Services of Pima County, Inc. dba e.spire

1 (“ACSI Pima”) and ACSI Local Switched Services, Inc. dba e.spire (“ACSI Switched”) (the “e.spire
 2 Operating Entities”); along with Xspedius Management Co. of Pima County, LLC and Xspedius
 3 Management Co. Switched Services, LLC (the “Xspedius Operating Entities”) (collectively,
 4 “Applicants”) filed with the Arizona Corporation Commission (“Commission”) the above-captioned
 5 joint application for authority pursuant to A.R.S. § 40-285 to transfer substantially all the assets of the
 6 e.spire Operating Entities to the Xspedius Operating Entities, for the purpose of allowing the
 7 Xspedius Operating Entities to provide service to the customers of the e.spire Operating Entities
 8 without interruption of service (“Joint Application”).¹

9 Also on June 19, 2002, the Xspedius Operating Entities filed applications for new Certificates
 10 of Convenience and Necessity (“CC&N”) to provide competitive resold and facilities based local
 11 exchange, exchange access, and interexchange telecommunications service in the State of Arizona.
 12 The Commission approved the CC&N applications and granted authority for the asset transfers in
 13 Decision No. 65124 (August 23, 2002).

14 In addition to the asset transfer, the Joint Application requested authority for the e.spire
 15 Operating Entities to discontinue the provision of local exchange service, pursuant to A.A.C. R14-2-
 16 1107.

17 On October 3, 2002, the Commission’s Utilities Division Staff (“Staff”) filed a Staff Report
 18 recommending approval of the discontinuance of services by the e.spire Operating Entities.

19 * * * * *

20 Having considered the entire record herein and being fully advised in the premises, the
 21 Commission finds, concludes, and orders that:

22 FINDINGS OF FACT

23 1. On June 19, 2002, Applicants filed the Joint Application. The Joint Application
 24 requested authority pursuant to A.R.S. § 40-285 to transfer substantially all the assets of ACSI Pima
 25 and ACSI Switched to the Xpedius Operating Entities. The Commission approved the asset transfers
 26 in Decision No. 65124.

27 ¹ The Joint Application arose out of the voluntary petition for Chapter 11 protection that the e.spire Operating Entities
 28 filed with the United States Bankruptcy Court for Delaware on March 22, 2001, and a proposed transaction approved by
 the Bankruptcy Court in a Sale Order entered on June 5, 2002.

2. The Joint Application also requested authority for the e.spire Operating Entities to discontinue the provision of local exchange service, pursuant to A.A.C. R14-2-1107.

3. ACSI Pima was granted a CC&N by Commission Decision No. 60078 (February 19, 1996) to provide intrastate competitive telecommunications services in Arizona, including local exchange services and intraLATA toll services.

4. ACSI Switched was granted a CC&N by Commission Decision No. 60711 (February 27, 1998) to provide local switched services in Arizona.

5. On October 3, 2002, Staff filed a Staff Report recommending approval of the e.spire Operating Entities' request for discontinuance of services. Staff further recommended that:

- (a) the e.spire Operating Entities' application to discontinue telecommunications services in Arizona be granted by the Commission;
- (b) the e.spire Operating Entities' application to discontinue telecommunications services be approved without a hearing;
- (c) the Commission cancel the CC&Ns held respectively by ACSI Switched and ACSI Pima;
- (d) the Commission cancel the tariffs filed respectively by ACSI Switched and ACSI Pima; and
- (e) upon cancellation of its CC&N, ACSI Switched and ACSI Pima will no longer be authorized to provide competitive facilities-based local exchange telecommunications services in Arizona and will no longer be subject to the requirements of Decision No. 60711 and Decision No. 60078.

6. Staff also recommended the following:

- (a) that the Xspedius Operating Entities issue a notice in accordance with AAC R14-2-1107 and provide a 90-day period from the date of notice in which the transferred customers may elect to discontinue service without penalty; and
- (b) that the notice be issued within 30 days of the effective date of an order in this matter. If the notice is not issued within the 30-day period, the Xspedius Operating Entities' CC&Ns should be rendered null and void and no time extensions shall be granted without further order of the Commission.

7. The July 25, 2002 Procedural Order issued in these consolidated dockets provided Applicants with an opportunity to file any objections to the Staff Report. Applicants did not file any objection.

1 8. A.A.C. R14-2-1107 requires any telecommunications company providing competitive
2 local exchange service that intends to discontinue service or to abandon all or a portion of its service
3 area to file an application for authorization with the Commission setting forth the following:

- 4
- 5 (a) Any reasons for the proposed discontinuance of service or abandonment of
6 service area;
 - 7 (b) Verification that all affected customers have been notified of the proposed
8 discontinuance or abandonment, and that all affected customers will have
9 access to an alternative local exchange service provider;
 - 10 (c) Where applicable, a plan for the refund of deposits collected; and
 - 11 (d) A list of all alternative utilities providing the same or similar service within the
12 affected geographic area.

13 9. Staff stated in the Staff Report that the e.spire Operating Entities have complied with
14 the provisions of AAC R14-2-1107.

15 10. On June 7, 2002, Applicants notified the customers of the e.spire Operating Entities of
16 the proposed discontinuance and transfer of service to the Xspedius Operating Entities. The June 7,
17 2002 letter informed customers that they need not take any action, or pay any change charges, to be
18 transferred to Xspedius, but that if they chose to change providers, the terms and conditions of their
19 e.spire contract would still apply, including any applicable termination liability or change charges.

20 11. Decision No. 65124 conditioned approval of the asset transfer upon re-notification of
21 the customers to inform them that they could elect, within 90 days of the notification, to continue or
22 discontinue service at their discretion, without prejudice or regard to contractual obligation.

23 12. Neither ACSI Pima nor ACSI Switched are providing service to any customers in
24 Arizona. All of their customers have been transferred to the Xspedius Operating Entities.

25 13. On December 3, 2002, the Xspedius Operating Entities mailed to the transferred
26 customers, by U.S. First-Class Mail, a letter notifying those customers of their option to discontinue
27 receiving service from the Xspedius Operating Entities within 90 days of the notice, with no
28 contractual penalties. This action constitutes compliance with the final Ordering Paragraph of

1 Decision No. 65124, which conditioned approval of the asset transfer upon such a notice.

2 14. As required by the July 25, 2002 Procedural Order in this matter, Applicants caused
3 notice of the request for discontinuance to be published in the *Arizona Republic* on July 30, 2002, and
4 caused the same notice to be mailed to the customers of ACSI Pima and ACSI Switched on July 29,
5 2002. This notice constitutes compliance with the requirements of A.A.C. R14-2-1107.

6 15. No objections, requests for hearing, or motions to intervene were filed.

7 16. All Arizona customers affected by the discontinuance request will have access to an
8 alternative local exchange service provider.
9

10 17. Customer deposits have been transferred to the customer accounts at the Xpedius
11 Operating Entities, and pursuant to Decision No. 65124, deposits will be refunded to customers who
12 choose to discontinue service from the Xspedius Operating Entities within 90 days of the December
13 3, 2002 notice.

14 18. Staff's recommendations in Findings of Fact No. 5 above are reasonable.

15 19. Applicants have complied with Staff's recommendations as set forth in Findings of
16 Fact No. 6 above.
17

18 **CONCLUSIONS OF LAW**

19 1. Applicants are public service corporations within the meaning of Article XV of the
20 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

21 2. The Commission has jurisdiction over Applicants and the subject matter of the
22 Application.
23

24 3. Applicants have complied with the requirements of A.A.C. R14-2-1107.

25 4. Notice of the Application was provided as required by law.

26 5. In accordance with A.A.C. R14-2-1107(A), the Application may be granted without a
27 hearing.
28

6. Staff's recommendations in Findings of Fact No. 5 above are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the requests of American Communication Services of Pima County, Inc. dba e.spire and ACSI Local Switched Services, Inc. dba e.spire to discontinue the provision of local exchange service pursuant to A.A.C. R14-2-1107 are hereby approved.

IT IS FURTHER ORDERED that the Certificate of Convenience and Necessity granted to American Communication Services of Pima County, Inc. dba e.spire in Decision No. 60078 (February 19, 1996) is hereby cancelled; American Communication Services of Pima County, Inc. dba e.spire's tariffs are hereby cancelled; and American Communication Services of Pima County, Inc. dba e.spire is no longer subject to the requirements of Decision No. 60078.

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1 IT IS FURTHER ORDERED that the Certificate of Convenience and Necessity granted to
2 ACSI Local Switched Services, Inc. dba e.spire in Decision No. 60711 (February 27, 1998) is hereby
3 cancelled; ACSI Local Switched Services, Inc. dba e.spire's tariffs are hereby cancelled; and ACSI
4 Local Switched Services, Inc. is no longer subject to the requirements of Decision No. 60711.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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8
9 CHAIRMAN COMMISSIONER COMMISSIONER

10
11 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
12 Secretary of the Arizona Corporation Commission, have
13 hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this ____ day of _____, 2003.

16 BRIAN C. McNEIL
EXECUTIVE SECRETARY

17 DISSENT _____

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1 SERVICE LIST FOR:

ACSI LOCAL SWITCHED SERVICES, INC.

2 DOCKET NO.

T-04112A-02-0450 et al.

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